IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5089 OF 2004

Pralhad Narahar Sapre .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.Saurabh M. Railkar for the petitioner

Mr.V.P.Malvankar, A.G.P. for the respondent no.1 to 3

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 24TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, JJ.)

1. In the present petition, the petitioner is challenging the acquisition proceedings in respect of Gut No.1085, admeasuring 72.5 areas plus 26.8 ares pot Kharaba situated at Village Sasale, Taluka Rajapur, District Ratnagiri in the State of Maharashtra. The said property is owned by the petitioner alongwith three others as co-owners.

2. Sometime in or about June 2002, it was decided to construct a public road leading to Rathodwadi and consequently it became necessary to acquire a part of the land in possession of the petitioner herein. On 9th October 2002, from the office of the Deputy Taluka Inspector of Land Records, a notice was issued to the petitioner informing him that his land would be measured. On 18th October 2002, the said notice was accepted by the petitioner. A notification u/s.4 of the Land Acquisition Act came to be issued on 28th February 2003 for acquisition of an area of 2.50 ares from the said land of the petitioner for purpose of construction of public road. On 20th June 2003, individual notices u/s.4(i) of the Land Acquisition Act came to be issued. The petitioner filed his objection on 23rd July 2003. On 13th April 2004, a notification u/s.6 was issued which was published in Government Gazette on 29th April 2004. On 1st June 2004, a notice u/s.9 was issued to the petitioner inter alia stipulating therein that the petitioner should remain present on 16th June 2004.

The said notice was received by the petitioner on 13th June 2004. The petitioner has thereafter filed the present Writ Petition challenging the acquisition proceedings inter alia on the ground that the petitioner has not been given an opportunity of hearing u/s.5(A) of the Land Acquisition Act, 1894. It is now well settled that the provision of section 5(A) which provides for a personal hearing to the affected party before making a declaration u/s. 6 of the Land Acquisition Act is mandatory and non-compliance thereof vitiates the whole of the acquisition proceedings. The respondents have filed their reply and in para 7 thereto it has been stated as under:

> "7. With reference to the para No.6 of the Writ Petition, I state that the objections raised by the Petitioner from time to time are already considered and after reports from the Grampanchayat, Sasale regarding objection the relevant replies are given to the Petitioner, so it is not true that the objection of petitioner is not considered by the Respondent. The letter was sent to the Petitioner on 22-3-2004 regarding his objections. The report of publication of notice u/s.6 was submitted to the Commissioner, Konkan Division, through the

> Collector, Ratnagiri on 31-3-2004. After considering the case and all reports, the Commissioner, Konkan Division, published the Notice under Section 6 on 29-4-2004 and in newspapers 1) Ratnabhoomi on 25-4-2004, 2) Sagar on 24-4-2004."

3. In the light of the averments made in the aforesaid affidavit, it is clear that there has been no notice u/s.5(A) of the Land Acquisition Act and no personal hearing has been granted to the petitioner for raising objection to the said acquisition proceedings. At the time of hearing of the petition also, the learned counsel for the respondents was also unable to show us that any such notice was issued and served on the petitioner or the petitioner was heard by the Special Land Acquisition Officer before issuance of a notification u/s.6 of the Land Acquisiton Act. The learned counsel reiterated what is stated in para 7 of the said affidavit.

4. In our view, there is non-compliance of the provision of s.5(A) of the Land Acquisition Act, 1894 and in view of the fact that the said

requirement is mandatory, we quash and set aside the said notification u/s.6 dated 13th April 2004 and also consequential notices u/s.9 dated 1st June 2004 and direct the respondents to commence the proceedings from the state of hearing under section 5(A) of the Land Acquisition Act. We dispose of the present petition with the aforesaid direction. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.